

the guarantee is requested late in the current production year and actual yields can be reasonably estimated. An appraisal is not required for loans of \$50,000 or less if a strong equity position exists.

(2) *Basis of value.* The appraised value of chattel property will be based on public sales of the same or similar property in the market area. In the absence of such public sales, reputable publications reflecting market values may be used.

(3) *Appraisal form.* Appraisal reports may be on the Agency's appraisal of chattel property form or on any other appraisal form containing at least the same information.

(4) *Experience and training.* Chattel appraisals will be performed by appraisers who possess sufficient experience or training to establish market (not retail) values as determined by the Agency.

(c) *Real estate security.* The requirements for real estate appraisals are:

(1) *Loans of \$250,000 or less.* The lender must document the value of the real estate by applying the same policies and procedures as their non-guaranteed loans.

(2) *Loans greater than \$250,000.* The lender must document the value of real estate using a current appraisal (not more than 12 months old) completed by a State Certified General Appraiser. Real estate appraisals must be completed in accordance with USPAP. Restricted reports as defined in USPAP are not acceptable. The Agency may allow an appraisal more than 12 months old to be used only if documentation provided by the lender reflects each of the following:

(i) Market conditions have remained stable or improved based on sales of similar properties,

(ii) The property in question remains in the same or better condition, and

(iii) The value of the property has remained the same or increased.

(3) Agency determinations under paragraph (c)(2) of this section to permit appraisals more than 12 months old are not appealable.

[78 FR 65529, Nov. 1, 2013]

§ 762.128 Environmental and special laws.

(a) *Environmental requirements.* The requirements found in part 1940, subpart G, of this title must be met for guaranteed OL, FO, and CL. CLP and PLP lenders may certify that they have documentation in their file to demonstrate compliance with paragraph (c) of this section. Standard eligible lenders must submit evidence supporting compliance with this section.

(b) *Determination.* The Agency determination of whether an environmental problem exists will be based on:

(1) The information supplied with the application;

(2) The Agency Official's personal knowledge of the operation;

(3) Environmental resources available to the Agency including, but not limited to, documents, third parties, and governmental agencies;

(4) A visit to the farm operation when the available information is insufficient to make a determination;

(5) Other information supplied by the lender or applicant upon Agency request. If necessary, information not supplied with the application will be requested by the Agency.

(c) *Special requirements.* Lenders will assist in the environmental review process by providing environmental information. In all cases, the lender must retain documentation of their investigation in the applicant's case file.

(1) A determination must be made as to whether there are any potential impacts to a 100 year floodplain as defined by Federal Emergency Management Agency floodplain maps, Natural Resources Conservation Service data, or other appropriate documentation.

(2) The lender will assist the borrower in securing any applicable permits or waste management plans. The lender may consult with the Agency for guidance on activities which require consultation with State regulatory agencies, special permitting or waste management plans.

(3) The lender will examine the security property to determine if there are any structures or archeological sites which are listed or may be eligible for listing in the National Register of Historic Places. The lender may consult

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with the Agency for guidance on which situations will need further review in accordance with the National Historical Preservation Act and part 1940, subpart G.

(4) The applicant must certify they will not violate the provisions of § 363 of the Act, the Food Security Act of 1985, and Executive Order 11990 relating to Highly Erodible Land and Wetlands.

(5) All lenders are required to ensure that due diligence is performed in conjunction with a request for guarantee of a loan involving real estate. Due diligence is the process of evaluating real estate in the context of a real estate transaction to determine the presence of contamination from release of hazardous substances, petroleum products, or other environmental hazards and determining what effect, if any, the contamination has on the security value of the property. The Agency will accept as evidence of due diligence the most current version of the American Society of Testing Materials (ASTM) transaction screen questionnaire available from 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428–2959, or similar documentation, approved for use by the Agency, supplemented as necessary by the ASTM phase I environmental site assessments form.

(d) *Equal opportunity and non-discrimination.* (1) With respect to any aspect of a credit transaction, the lender will not discriminate against any applicant on the basis of race, color, religion, national origin, sex, marital status, or age, provided the applicant can execute a legal contract. Nor will the lender discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith, exercises any rights under the Consumer Protection Act.

(2) Where the guaranteed loan involves construction, the contractor or subcontractor must file all compliance reports, equal opportunity and non-discrimination forms, and otherwise comply with all regulations prescribed by the Secretary of Labor pursuant to Executive Orders 11246 and 11375.

(e) *Other Federal, State and local requirements.* Lenders are required to coordinate with all appropriate Federal,

State, and local agencies and comply with special laws and regulations applicable to the loan proposal.

[64 FR 7378, Feb. 12, 1999, as amended at 72 FR 63297, Nov. 8, 2007; 75 FR 54014, Sept. 3, 2010]

§ 762.129 Percent of guarantee and maximum loss.

(a) *General.* Except for CLs, the percent of guarantee will not exceed 90 percent based on the credit risk to the lender and the Agency both before and after the transaction. The Agency will determine the percentage of guarantee. For CLs, the percent of guarantee will be 75 percent.

(b) *Exceptions.* The guarantee will be issued at 95 percent in any of the following circumstances:

(1) The sole purpose of a guaranteed FO or OL is to refinance an Agency direct farm loan. When only a portion of the loan is used to refinance a direct Agency loan, a weighted percentage of a guarantee will be provided;

(2) When the purpose of an FO guarantee is to participate in the downpayment loan program;

(3) When a guaranteed OL is made to a farmer who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding; or

(4) When a guaranteed OL is made to a farmer whose farm land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe.

(c) *CLP and PLP guarantees.* Except for CLs, all guarantees issued to CLP or PLP lenders will not be less than 80 percent.

(d) *Maximum loss.* The maximum amount the Agency will pay the lender under the loan guarantee will be any loss sustained by such lender on the guaranteed portion including:

(1) The pro rata share of principal and interest indebtedness as evidenced by the note or by assumption agreement;

(2) Any loan subsidy due and owing;

(3) The pro rata share of principal and interest indebtedness on secured protective and emergency advances